



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Loral Systems Company

File: B-270755

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John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated protester's proposal is denied where review of the agency's evaluation documentation shows that the ratings assigned to the proposal were reasonable and related to the solicitation's stated evaluation criteria.
2. Agency reasonably excluded protester's proposal from the competitive range where proposals in the competitive range were rated superior to protester's and protester's proposed cost was substantially higher than that of the competitive range proposals.

DECISION

Loral Systems Company protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTCG23-94-R-AVT001, issued by the Coast Guard for the design, installation, and maintenance of VTS (vessel traffic system) 2000, a vessel management and navigation safety system.

We deny the protest.

BACKGROUND

VTs 2000 is to be an open system with sensors, communications links, and decision support tools that will allow the Coast Guard to monitor vessel traffic and disseminate information. The project will consist of two phases. Phase I, which may involve multiple fixed-priced contracts, will be a design effort. At the conclusion of phase I, a single system integration contractor will be selected for

award via exercise of a phase II option. During phase II, the design will be completed and the system installed and maintained by the contractor at selected ports.

The RFP contemplates the award of contracts to the offerors whose proposals, conforming to the requirements of the statement of work, are determined to be the most advantageous to the government, considering the following evaluation areas, listed in descending order of importance, and evaluation factors:

1. Corporate experience, past performance and management

- A. Corporate experience
- B. Past performance
- C. Management

2. Technical

- D. System architecture
- E. Design
- F. Integrated support

3. Cost

Each of the evaluation factors includes subfactors.

The agency evaluated the initial proposals, assigning to each proposal ratings of "exceptional," "acceptable," "marginal," or "unacceptable" under each of the evaluation subfactors, factors and areas. After the evaluation, the Coast Guard issued to Loral and other offerors numerous questions that the agency labeled "clarification requests." In Loral's case, the agency sent the firm five letters that contained a total of 65 questions. Loral responded to those questions with approximately 400 proposal change pages.

By letter of December 1, 1995, the Coast Guard informed Loral that its proposal was excluded from the competitive range because, based on a comparison to the other proposals received, Loral's proposal was "determined not to have a reasonable chance of being selected for award." That letter stated that the evaluation included consideration of Loral's clarification responses and that, in general, the proposal was excluded because it:

"contained shortcomings (weaknesses or deficiencies) in the Corporate Experience and Management factors. These

shortcomings, in addition to significantly evaluated costs, resulted in noncompetitive range assessment."

After Loral requested additional information, in a December 7 letter the Coast Guard provided Loral with a list of evaluated shortcomings in Loral's proposal under the Corporate experience and Management evaluation factors and again noted that the cost of Loral's proposal was an issue in the competitive range exclusion.

PROTEST ALLEGATIONS

Loral maintains its proposal was unreasonably evaluated, and the competitive range determination was flawed because the agency improperly failed to evaluate the substantial advantages inherent in Loral's proposal. Loral also argues that, while the agency conducted discussions with Loral before excluding its proposal from the competitive range, those discussions were not meaningful since they did not cover the weaknesses in the firm's proposal that prevented Loral from having a chance for award. In addition, Loral contends that the alleged weaknesses and deficiencies that resulted in the exclusion of its proposal were mere informational deficiencies.

THE TECHNICAL EVALUATION

Loral maintains that the evaluation was irrational because the agency failed to evaluate properly the substantial advantages inherent in Loral's utilization of a subcontractor, STN Atlas Elektronik GmbH, which has been responsible for installation of more than 40 percent of the world's currently operating VTS systems.

The record shows that Coast Guard evaluators did give credit to Loral for proposing STN as a subcontractor. In the Technical evaluation area, Loral's proposal received an overall rating of "excellent" based on ratings of "excellent" on the System architecture and Design factors and "acceptable" on the Integrated support factor. These ratings were based in large part on the evaluators' favorable judgment concerning Loral's proposal of STN, a firm that has installed and is operating numerous VTS systems. For example, under the System architecture factor, the evaluators noted Loral had proposed STN's system, "which is operational in 32 ports world wide as the VTS solution," and determined that, "from a technical point of view this system fully meets all requirements of [the System architecture factor] with significant benefits." Under the Design evaluation factor, the evaluators concluded that Loral's proposal demonstrated "a thorough understanding of VTS systems," that the "design approach and technical solution proposed will readily meet VTS 2000 system requirements," and that the "[p]roposed system is highly flexible and adaptable without major changes in architecture or system design to meet evolving VTS requirements."

Nonetheless, Loral did not score as high in the Corporate experience, past performance and management evaluation area, receiving an overall rating of "acceptable." That rating, at least in part, was a result of concerns with the lack of demonstrated experience of the proposed Loral-STN team on current or past contracts. Under the Corporate experience factor, which included subfactors concerned with "integration experience" and "transition experience," the evaluators stated that, with two exceptions, Loral's examples of previous contracts "do not demonstrate experience transitioning systems to the customer as defined in the RFP. For the balance of the experiences described, [Loral] has yet to fully transition the operation and maintenance of the system, or expects to retain maintenance and operational responsibility for the life of the program."

Loral argues that it was irrational to rate Loral's proposal favorably for STN's expertise in the Technical evaluation area but to not also give Loral's proposal credit under the Corporate experience and Management evaluation factors. Loral notes that the Coast Guard recognizes that STN's experience offers distinct advantages in the Technical evaluation area, and argues that such experience presents equally distinct advantages under the Corporate experience and Management evaluation factors.

In addition, Loral argues that the evaluators' conclusion that Loral's proposal failed to demonstrate experience of the proposed Loral-STN team on current or past contracts is contradicted by the record. Loral notes that its proposal states that Loral and STN worked together on various programs over the past 9 years, and they are currently working on the [deleted] and other [deleted] programs and also were teamed for the [deleted] program. Loral also argues the agency has failed to explain how a corporation that has implemented VTS systems nearly identical to VTS 2000 in more than 30 ports worldwide has not demonstrated directly relevant experience or lacks management expertise to design and implement such a system. Loral notes that its proposal discussed STN's experience implementing modern VTS systems for the Port of Shanghai, China and the Port of Melbourne, Australia--demonstrating substantial corporate and managerial experience in precisely the type of work called for by the solicitation. Thus, according to Loral, the Coast Guard's rationale for discounting the corporate experience of the Loral-STN team--that is, that Loral's proposal failed to identify existing or past contracts involving the Loral-STN team--is factually erroneous and irrational.

In response, the Coast Guard states that the offeror here was Loral, not STN, and while it credited Loral with STN's extensive experience in the Technical area, it considers the most relevant experience under the Corporate experience, past performance and management area to be that of Loral, not STN. The Coast Guard also argues that the two programs that Loral cites to show its long-term working relationship with STN are largely irrelevant [deleted] programs.

Generally, the evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Here, we have no basis to disagree with the evaluation and the ratings assigned to Loral's proposal.

Loral argues that it was not given sufficient credit for proposing STN as a subcontractor, because while agency evaluators gave Loral's proposal an overall rating of "excellent" in the Technical evaluation area, largely due to the proposal of STN, they did not do so in the Corporate experience, past performance and management area. Loral argues that STN itself has the relevant corporate experience and management expertise and that Loral's proposal should have been given an "excellent" instead of an "acceptable" rating on that basis. According to Loral, agencies generally are permitted to base the evaluation of corporate experience on the experience of a subcontractor when the subcontractor is to do the work to which the experience is applicable. See Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458. Nonetheless, while agencies often are permitted to consider the experience of a subcontractor in the evaluation of corporate experience, the significance of, and the weight to be assigned to, a subcontractor's corporate experience is a matter of contracting agency discretion. See Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. Moreover, the solicitation repeatedly stated in the Corporate experience, past performance and management area that proposals would be evaluated to assess "the Offeror's" corporate experience, past performance and management. In that area, the evaluators focused on the experience of Loral itself and the Loral-STN team on contracts similar to VTS 2000 and concluded that, while STN had extensive experience in this area, Loral the prime contractor did not. We see nothing unreasonable with this evaluation approach.

Loral also argues that it should have been given credit in the Corporate experience, past performance and management evaluation area for the experience of the Loral/STN team on the [deleted] programs. Nonetheless, as the agency points out, neither Loral's proposal nor its submissions to this Office provided information on the value, size, scope, schedule, and key personnel of those programs—information that would be useful to judge the relevance of those contracts to the VTS 2000 program. Thus, Loral has provided insufficient information to justify a higher rating for Corporate experience.

Finally, Loral also notes that, under the Corporate experience factor, the Coast Guard identified Loral's corporate integration experience as a weakness and

discounted Loral's prior integration experience with the [deleted]. Loral points out, however, that in the evaluation record, the evaluators conceded that the [deleted] program:

" . . . most closely resembles the scope and complexity of the VTS 2000 program in terms of subcontract content, integration requirements, approximate value and period of performance, and employed the same subcontract management methodology, plans and control as for the VTS 2000. . . ." (Emphasis added.)

According to Loral, this quotation demonstrates the irrationality of assigning a weakness to Loral's proposal based on lack of corporate integration experience. Loral argues that its proposal amply demonstrated the integration experience required by the RFP in the [deleted] program. Also, according to Loral, in terms of scope and complexity, the [deleted] program closely resembles the VTS 2000 program and therefore there was no factual basis for assigning a weakness to Loral's proposal for integration experience.

The above quotation from the evaluation record is not complete. The evaluators also noted, "however, [deleted] is not a command and control system, but an air crew training system; similarity appears to be indirect." While it may be, as Loral argues, that the [deleted] program demonstrates Loral's integration experience, the evaluators discounted that experience in the context of the evaluation under the VTS program due to dissimilarities between the two programs. We have no basis to disagree with that judgment.¹

¹Loral also notes the evaluators criticized its proposal because its "specific approach to managing the VTS project is not indicated as having been used," and argues this alleged weakness is contradicted by the record. Loral notes that its proposal identified seven prior contracts in which its proposed management approach was successfully utilized. According to Loral, the "acceptable" rating assigned to its proposal in this area is based on a proposal weakness that does not exist. From our review of the record, including the Coast Guard's response to this issue, it is unclear why this issue resulted in an evaluated weakness in Loral's proposal. Nonetheless, we do not agree with Loral that the elimination of this single weakness would improve Loral's "acceptable" rating in the Corporate experience, past performance and management evaluation area. First, the evaluation record includes two other weaknesses--that Loral does not challenge--under the Management approach evaluation subfactor; so it is not likely that Loral's rating on that subfactor would improve from "acceptable" to "exceptional." Second, Management approach was one of five subfactors under the Management evaluation factor and the Corporate experience, past performance and management evaluation area included (continued...)

THE COMPETITIVE RANGE EXCLUSION

We next address Loral's contention that its proposal should have been included in the competitive range. In establishing a competitive range, agencies are required to include only those firms whose proposals are determined to have a reasonable chance of receiving award. Federal Acquisition Regulation (FAR) § 15.609; Better Serv., B-256498.2, Jan. 9, 1995, 95-1 CPD ¶ 11. Where a protester challenges an agency's elimination of its proposal from the competitive range, our review is limited to considering whether the competitive range determination was reasonable and in accordance with the terms of the RFP and applicable regulations and statutes. Cyber Digital, Inc., B-255225, Feb. 18, 1994, 94-1 CPD ¶ 123.

Here, Loral's proposal was excluded from the competitive range because, based on the technical merit in the Loral proposal and the cost of that proposal, compared to the proposals included in the competitive range--each of which was higher rated technically and had significantly lower costs--the agency concluded that Loral's proposal did not have a reasonable chance for award. As we have explained, we have no reason to believe that the ratings assigned to Loral's proposal were flawed. Concerning cost, Loral proposed to perform the contract at a cost of approximately [deleted] million, compared to proposals of approximately [deleted] for the three proposals included in the competitive range. In addition, the agency evaluated the cost proposals in order to determine "if proposed costs are commensurate with the tasks to be performed." Based on that evaluation, the agency concluded that the most probable cost (MPC) of Loral's proposal was approximately [deleted], compared to MPCs of approximately [deleted] for the competitive range proposals.

A proposal may be excluded from the competitive range if, based upon the array of technical ratings actually obtained by the proposals and consideration of cost, the proposal does not stand a real chance of being selected for award. The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271. In addition, cost not only is a proper factor for consideration, but may emerge as the dominant factor in determining whether a proposal falls within the competitive range. Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334. This is true even where, as here, cost is the least important evaluation factor. See id.

¹(...continued)

two other evaluation factors, each with subfactors. Loral received numerous ratings of "marginal," and "acceptable" on the other factors and subfactors that make up the Corporate experience, past performance and management evaluation area; we do not see how the removal of this single weakness would improve Loral's overall "acceptable" rating in this area.

In this case, we think the Coast Guard reasonably concluded that primarily because of its high cost Loral's proposal did not have a real chance for award and excluded the proposal from the competitive range on that basis. Although Loral generally states that it could have reduced its proposed costs if cost discussions had been conducted with it, the protester has not explained how it could have reduced its costs sufficiently for its proposal to become competitive from a cost standpoint with the competitive range proposals, two of which offered [deleted] the cost of Loral's proposal. In addition, although Loral has had access to the three competitive range proposals and the evaluation record concerning those proposals, Loral has not challenged the realism of the cost of the competitive range proposals, even though those proposals all include costs substantially less than that proposed by Loral.² Under these circumstances, we have no reason to believe that Loral's proposal could have become significantly more competitive from a cost or a technical standpoint as a result of discussions.³

²After receipt of the agency report on its initial protest, Loral filed a supplemental protest in which it argued that the Coast Guard had improperly relaxed specification requirements for the three competitive range firms, thereby allowing those firms to propose costs significantly below that proposed by Loral. After its review of the agency's report filed in response to the supplemental protest, Loral withdrew that protest.

³Loral notes that the agency's competitive range determination document states that Loral "could conceivably have [its] evaluated . . . rating assessments improve and [its] costs lowered as a result of discussions/BAFOs [best and final offers]." According to Loral, this statement demonstrates that its proposal could have become more competitive based on discussions and therefore the exclusion of Loral's proposal from the competitive range was improper. Read in context, we do not agree that this statement indicates a belief on the part of agency personnel that Loral's proposal could have become competitive with the proposals included in the competitive range. After the above quotation, the competitive range determination document states:

"However, any degree of positive impact for [Loral] that may result from a discussion/BAFO environment would have to be viewed in the context of a best value analysis with the three currently identified best value proposals, who themselves will have higher evaluated ratings and lowered costs in a discussion/BAFO environment. In consideration of the current evaluated factor ratings, subfactor ratings, and evaluated costs, it is not expected that, even with improvements in their proposal ratings and lower costs, [Loral] would have a reasonable chance of being selected for award."

DISCUSSIONS

Loral also argues that before excluding its proposal from the competitive range, the Coast Guard conducted discussions--but not meaningful discussions--concerning Loral's proposal. In this respect, although the agency's letters to Loral characterized its questions as "clarification requests," Loral maintains that those inquiries were in fact discussions because they sought elaboration upon substantive areas of Loral's proposal and invited Loral to expand in detail upon its substantive approach to satisfying the solicitation's requirements. In addition, Loral notes that it responded to these inquiries by providing almost 400 proposal change pages that addressed the Coast Guard's extensive questions in a wide range of substantive areas. Loral also maintains that, although discussions were held with it, the Coast Guard violated FAR §15.610 and the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(A)(i) (1994), because those discussions were not meaningful since virtually none of the 65 "clarification requests" issued to Loral identified any of the alleged weaknesses or deficiencies in the Corporate experience, past performance and management area or the Cost area of Loral's proposal, which formed the basis of Loral's exclusion from the competitive range.

Irrespective of whether discussions actually were held and, if they were, whether they were meaningful, Loral was not prejudiced by the Coast Guard's actions. As explained above, Loral's proposal was rated lower than the competitive range proposals in part because the evaluators declined to give Loral the credit Loral believes its proposal deserved for the experience and expertise of STN, Loral's subcontractor, in the Corporate experience, past performance and management evaluation area. Although Loral argues that the agency's concerns here were simply informational--and therefore should have been discussed--the problem was fundamental to Loral's proposed approach and therefore was not required to be discussed. See Polar Products, B-242079, Mar. 27, 1991, 91-1 CPD ¶ 331. More importantly, Loral's proposal was excluded from the competitive range because, based on the proposal's technical merit and cost, compared to the proposals included in the competitive range--each of which was higher rated technically and had significantly lower costs--the agency reasonably concluded that Loral's proposal did not have a reasonable chance for award. As explained above, we have concluded that the ratings assigned to Loral's proposal were reasonable and Loral has not explained how it would have reduced its costs sufficiently for its proposal to become competitive from a cost standpoint with the competitive range proposals, two of which have proposed and evaluated costs [deleted] the cost of Loral's proposal. In these circumstances, we do not see how Loral was prejudiced by the

agency's failure to discuss with it deficiencies when such discussions would not have placed the firm in a position to have a real chance for award. See IT Corp., B-258636 et al., Feb. 10, 1995, 95-1 CPD ¶ 78.⁴

The protest is denied

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⁴Although we do not decide whether the questions asked of Loral and Loral's responses constituted clarifications or discussions, it is unclear to us what purpose was served by asking Loral the questions and inviting a response from the firm. The questions, numerous and calling for voluminous responses, did not--by the Coast Guard's own admission--address the agency's concerns that subsequently led to the exclusion of Loral's proposal from the competitive range. While we have concluded that the exclusion was reasonable because Loral did not have a real chance of receiving award--even if discussions were held with the firm concerning cost and the Corporate experience, past performance and management area--we question the appropriateness of the agency's asking questions that could not have improved Loral's chances for award.